decide, in each particular case, which specific effects of a regulation which has been declared void must be maintained. It is therefore for the Court, where it makes use of the possibility of limiting the effect on past events of a declaration in proceedings under Article 177 that a measure is void, to decide whether an exception to that temporal limitation of the effect of its judgment may be made in favour of the party which brought the action before the national court or of any other trader who took similar steps before the declaration of invalidity or whether, conversely, a declaration of invalidity applicable only to the future constitutes an adequate remedy even for traders who took action at the appropriate time with a view to protecting their rights.

OPINION OF MR ADVOCATE GENERAL DARMON
delivered on 14 November 1984 [1]

Mr President,
Members of the Court,

1. The questions referred to the Court for a preliminary ruling by the Tribunal d'Instance, Paris are further evidence of the importance of the judgments of the Court of 15 October 1980, [2] in particular of the *Roquette* judgment, and the interest which they aroused.

In the *Roquette* case the Court was faced with seven questions referred to it for a preliminary ruling by the Tribunal d'Instance, Lille, by judgment of 29 June 1979. The first six questions indirectly put in issue the validity of Regulation (EEC) No 652/76 of 24 March 1976 changing the monetary compensatory amounts following changes in exchange rates for the French franc.

In the *Roquette* judgment the Court held that:

'(1) Regulation No 652/76 of the Commission of 24 March is invalid:

in so far as it fixes the compensatory amounts applicable to maize starch on a basis other than that of the intervention price of maize after deduction of the production refund on starch;

...

in so far as it fixes the compensatory amounts applicable to all the different products obtained by the processing of a given quantity of the same basic product, such as maize or wheat, in a specified manufacturing process at a figure appreciably higher than the compensatory amount fixed for that given quantity of the basic product,

...

1 — Translated from the French.

2 — The so-called maize cases: Case 4/79 *Providence Agricole de la Champagne* v *ONIC* [1980] ECR 2823; Case 109/79 *Maïseries de Beauce* v *ONIC* [1980] ECR 2883; Case 145/79 *Roquette Frères* v *French Customs Administration* [1980] ECR 2917 and the Opinion of Mr Advocate General Mayras at [1980] ECR 2855.

(3) The fact that the above-mentioned provisions are invalid does not enable the charging or payment of monetary compensatory amounts by the national authorities on the basis of those provisions to be challenged as regards the period prior to the date of this judgment.'

In that paragraph of the judgment the Court defined the consequences which should in the Court's view be given to that declaration of invalidity, limiting the scope of its decision by giving it an *ex nunc* effect.

As a basis for that limitation the Court pointed out that:

'Although the Treaty does not expressly lay down the consequences which flow from a declaration of invalidity within the framework of a reference to the Court for a preliminary ruling, Articles 174 and 176 contain clear rules as to the effects of the annulment of a regulation within the framework of a direct action. Thus Article 176 provides that the institution whose act has been declared void shall be required to take the necessary measures to comply with the judgment of the Court of Justice. In its judgments of 19 October 1977 in Joined Cases 117/76 and 16/77 (*Albert Ruckdeschel & Co. and Hansa-Lagerhaus Stroh & Co.* [1977] ECR 1753) and in Joined Cases 124/76 and 20/77 (*Moulins et Huileries de Pont-à-Mousson and Providence Agricole de la Champagne,* [1977] ECR 1795) the Court has already referred to that rule within the context of a reference to it for a preliminary ruling' (paragraph 51).

'In this case it is necessary to apply by analogy the second paragraph of Article 174 of the Treaty, whereby the Court of Justice may state which of the effects of the regulation which it has declared void shall be considered as definitive, for the same reasons of legal certainty as those which form the basis of that provision. On the one hand the invalidity of the regulation in this case might give rise to the recovery of sums paid but not owed by the undertakings concerned in countries with depreciated currencies and by the national authorities in question in countries with hard currencies which, in view of the lack of uniformity of the relevant national legislation, would be capable of causing considerable differences in treatment, thereby causing further distortion in competition. On the other hand, it is impossible to appraise the economic disadvantages resulting from the invalidity of the provisions of the regulations in question without making assessments which the Commission alone is required to make under Regulation No 974/71, having regard to other relevant factors, for example the application of the "green rate" of the production refund' (paragraph 52).

The Court's decision gave rise to academic controversy. In France it was generally criticized. The national court which had referred the matter did not consider itself bound by paragraph 3 of the operative part of the judgment. On the basis of the Court's declaration of invalidity and of its own refusal to take into account the *ex nunc* effect given by the Court to that declaration, it ordered the French State (Customs Administration) to repay to Roquette Frères the monetary compensatory amounts paid in application of the invalidated provisions.

That judgment of 15 July 1981 was in all essential respects upheld by judgment of the Cour d'Appel, Douai, of 19 January 1983; an appeal from the latter judgment is currently pending before the Cour de Cassation.

2. It is in those circumstances that the Tribunal d'Instance, Paris, before which the Société des Produits de Maïs has brought an action against the French Customs Administration for the repayment of sums collected by it as monetary compensatory amounts under Regulation No 652/76, has referred the following questions to the Court for a preliminary ruling:

(1) Are the provisions of Commission Regulation (EEC) No 652/76 of 24 March 1976 fixing the monetary compensatory amounts applicable to exports of broken maize (heading 10.05, now 23.02), gluten (heading 23.03) and products falling within headings 11.08 A I, 17.02 B I (a), 17.02 B I (b), 17.02 B II (a), 17.02 B II (b), 17.02-23, 17.02-28.0, 17.02-28.1, 35.05 A and 29.04-77.001 valid?

(2) If the reply to the first question is in the negative, to what extent are they invalid?

(3) If the reply to the first question is in the negative, what are the legal consequences of such invalidity with regard to a request for reimbursement of all or part of the monetary compensatory amounts levied by the national authorities on the basis of Commission Regulation No 652/76 of 24 March 1976?

(4) If it is duly established that a Community regulation is invalid and if such invalidity excludes any possibility of calling into question monetary compensatory amounts already charged under that regulation, does it also exclude, and if so, to what extent, any payment in respect of the monetary compensatory amounts in question?

Only the plaintiff in the main proceedings and the Commission submitted written observations and appeared at the hearing.

3. The Commission accepts that the products in question are all derived from maize. With the exception of maize starch they are different products from those concerned in the *Roquette* case. It admits, however, that Regulation No 652/76 should be declared invalid with regard to the fixing of compensatory amounts applicable to all the products other than maize bran (subheading 23.02 A I). In consequence of the Roquette judgment, new compensatory amounts were in fact fixed, with effect from the date of that judgment, for maize starch and for those other products except for bran.

4. The Société des Produits de Maïs explains that the amounts which it is seeking to recover before the national court were paid before 15 October 1980, the date of the Roquette judgment. It therefore considers it particularly important that the Court hear argument on 'the thorny problem' of whether or not preliminary rulings declaring measures invalid have retroactive effect. It submits that the Court should reconsider its position, on the ground that the second paragraph of Article 174 of the Treaty of Rome is not applicable by analogy in proceedings under Article 177 of the Treaty.

On that issue the Société des Produits de Maïs develops two main lines of argument:

(1) The exception provided for in the second paragraph of Article 174 can only be applied in a restrictive manner, which precludes its transposition by analogy to the preliminary ruling procedure regarding the validity of measures; such an extension is not justified by the application by analogy of the first paragraph of Article 176 which, far from endangering the scope of Article 177, tends to reinforce the immediacy of Community law; finally,

the Defrenne II judgment does not constitute a proper justification either; [3]

(2) Moreover, the solution adopted by the Court in the Roquette case entails the continuation of an unlawful state of affairs; it is contrary to the principles of legal certainty and of the immediacy of Community law, and if it were generally applied it would have the result of depriving Article 177 of its substance, since it would render any similar action brought before a national court inadmissible for lack of a legal interest.

5. The Commission considers that the questions referred to the Court for a preliminary ruling by the Tribunal d'Instance, Paris, 'have the merit of raising before the Court the question of the application by analogy of the second paragraph of Article 174 ... whereas that question was not argued in Case 145/79 since it was raised by the Commission only at the hearing'.

In its view, that extension stems from the need to apply Community law in a uniform manner while at the same time ensuring legal certainty. It is in order to take into account those interests that preliminary rulings given by the Court have general effects (*erga omnes*), at least going beyond the circumstances of the particular case. In that respect the Commission naturally refers to the judgment of the Court in the *International Chemical Corporation* case, [4] and goes on to point out that in that decision the Court again held that it was for the Community institution which had adopted the measure found to be invalid to take the necessary measures to correct the incompatibility found to exist; that constituted an application by analogy of Article 176 of the Treaty, normally governing actions for annulment or for failure to act, to the preliminary ruling procedure.

For the Commission the fact that in its judgments the Court has assimilated judgments declaring measures void and judgments declaring measures invalid implies that the latter should be considered to have effect *ex tunc*; as a result the disruption of previously existing legal relations resulting from a judgment declaring a measure to be invalid can be identical to that resulting from a judgmnet declaring a measure to be void, taking into account in particular the considerable differences between the laws of Member States with regard to time-limits for the bringing of legal proceedings. In most legal systems it is possible to limit the retroactive effect of a declaration that a measure is void. In Community law such a possibility is laid down in the second paragraph of Article 174 of the Treaty, which allows the Court to give preference to the principle of legal certainty over that of legality. The Court applied that exception in the *Defrenne* case, referred to above, by imposing temporal limits on the direct effect of Article 119 of the Treaty.

The Commission adds finally that if in a particular case considerations of legal certainty appear to be of such a nature as to justify limits on the temporal effect of a declaration of invalidity, only the Court of Justice, after weighing the various interests in question, may decide, in the judgment declaring the measure invalid, to limit the effects of that declaration. In no case may a national court take such a decision, for otherwise the essential unity of Community law might be prejudiced.

It considers however that in following the judgments of 15 October 1980 the Court should move in the direction suggested by the *Defrenne* judgment: if the provisions of the second paragraph of Article 174 are

3 — Judgment of 8 April 1976 in Case 43/75 [1976] ECR 455.

4 — Judgment of 13 May 1981 in Case 66/80 [1981] ECR 1191.

applied by analogy a judgment declaring a measure invalid should take effect *ex nunc*, except with regard to traders who have already disputed the legality of the regulation declared invalid, for whom it should retain its effect *ex tunc*. That 'exception to the exception' is justified by the need to maintain adequate legal protection for individuals who have brought legal proceedings in due time, taking into account the fact that the Commission is able to recalculate the compensatory amounts which should have been applied.

According to the Commission, however, such an exception should not be made in the following cases:

(1) Where the effect *ex nunc* has entailed no real burden for the persons concerned;

(2) Where the Court finds, as it did in the judgments of 15 October 1980, that the recovery of the sums paid but not owed 'would be capable of causing considerable differences in treatment, thereby causing further distortion in competition'; the existence of such a risk may be assessed by reference *inter alia* to the financial consequences of a new calculation by the Commission of the monetary compensatory amounts.

6. Although the French State is the defendant in the main proceedings and has, in the main proceedings in the *Roquette* case, appealed to the Cour de Cassation against the judgment given on 19 January 1983 by the Cour d'Appel, Douai, it has not submitted observations in these proceedings.

7. In this case no one has disputed the material grounds which led the Court to give only *ex nunc* effect to its declaration that the regulation in question was invalid.

What the Société des Produits de Maïs therefore seeks is the reconsideration of the Court's judgments, on purely legal grounds.

What the Commission proposes is a simple modification of the Court's point of view as expressed in those judgments.

8. Two principles govern the temporal effect of a decision in which the Court holds that a measure adopted by a Community institution is illegal: first, the Court has exclusive jurisdiction in the matter; secondly, the illegal measure is considered never to have existed.

The exclusive jurisdiction of the Court is based on the system of remedies established by the Treaty: Articles 173 to 176 of the Treaty concerning application for a declaration that a measure is void and Article 177 concerning preliminary rulings on validity clearly imply that the Court has the sole power to decide on the legality of secondary legislation. As a result the Court has held that a regulation must be presumed to be legal so long as the Court itself has not ruled that it is invalid. [5]

In the preliminary ruling procedure, it is certainly for the national authorities first of all to draw the consequences, in their legal system, of a declaration of invalidity; [6] the strict application of the division of competence resulting from Article 177 of the Treaty is not however without its drawbacks. That is, the rights which individuals may derive directly from Community law and in particular from regulations, which according to Article 189 are directly applicable, fall to be governed by the particular rules of each legal system; the Court has held that in the absence of any relevant Community measures, national procedural rules apply, under certain

5 — Case 101/78, *Granaria* v *Hoofdproduktschap voor Akkerbouwprodukten* [1979] ECR 623, paragraphs 4 to 5.

6 — Case 23/75 *Rey Soda* v *Cassa Conguaglio Zucchero* [1975] ECR 1279, paragraph 51.

conditions. [7] More specifically, the right to recovery of excess sums collected by national authorities on behalf of the Community, based on a finding by the Court of Justice that a regulation is illegal, must be exercised before the national courts in accordance with internal rules of procedure, [8] so long as they are not discriminatory. [9] That general principle of division of competence applies in cases where the action for recovery is based on the infringement or incorrect interpretation by national authorities of Community law and in cases where the national authorities have merely implemented a Community measure subsequently declared illegal. [10] It is the result of a procedural deficiency of the Community in an area (the making available of own resources) which does fall within its own jurisdiction and in which the national authorities have only residual powers of a procedural nature. [11]

Regrettable as it may be, [12] that procedural constraint cannot however affect the principle that the Court has exclusive jurisdiction to decide on the legality of a Community measure. In particular it cannot be inferred that it allows the courts of the Member States, in accordance with national rules which may be different, to decide unilaterally on the temporal effect of the Court's declaration that a measure is illegal, without at the same time putting in question the basis of the original division of power and the objective of the uniform application of Community law. [13]

That is not all. As the Court pointed out in the *International Chemical Corporation* judgment, the procedure for preliminary rulings on validity involves 'particularly imperative requirements concerning legal certainty in addition to those concerning the uniform application of Community law'; the Court therefore concluded that although a judgment of the Court 'is directly addressed only to the national court which brought the matter before the Court, it is sufficient reason for any other national court to regard that act as void for the purposes of a judgment which it has to give', without however depriving the latter of the possibility of raising further questions by a reference for a preliminary ruling. [14]

Finally, it must be recalled that the simple declaration that a Community measure is invalid is not always sufficient to eliminate its illegality; the complexity of the adjustments which may result from that finding of illegality may require action on the part of the responsible institutions making it possible for the national authorities themselves to apply them. [15] In my view that constitutes further confirmation of

7 — Case 33/76, *Rewe-Zentral* v *Landwirtschaftskammer Saarland* [1976] ECR 1989, paragraph 5.

8 — Case 26/74, *Roquette Frères* v *Commission* [1976] ECR 677, paragraphs 9 to 11.

9 — Case 265/78 *Ferwerda* v *Produktschap voor Vee en Vlees* [1980] ECR 617, paragraphs 10 and 12; Case 130/79, *Express Dairy Foods* v *Intervention Board for Agricultural Produce* [1980] ECR 1887, paragraph 12.

10 — See the Opinion of Mr Advocate General Capotorti in the *Express Dairy Foods* case, referred to above, at pp. 1908 to 1910, and the judgments referred to.

11 — Case 130/79, referred to above, at paragraphs 10 and 11.

12 — Case 130/79, referred to above, at paragraph 12.

13 — Case 166/73, *Rheinmühlen* v *Einfuhr- und Vorratstelle Getreide* [1974] ECR 33, paragraph 2.

14 — Judgment of 13 May 1981 in Case 66/80 [1981] ECR 1191, paragraphs 12 to 14.

15 — Joined Cases 117/76 and 16/77, *Ruckdeschel* v *Hauptzollamt Hamburg-St Annen* [1977] ECR 1753, paragraphs 11 to 13.

the exclusive jurisdiction of the Court and more generally of the Community in this area.

9. Since the Court is the sole judge of the legality of a Community measure it must also have exclusive jurisdiction, whenever such a decision is necessary, to determine the effect with regard to third parties and the temporal effect of its exclusive jurisdiction, allowing the national court, in accordance with the rules of its own national legal system, to rule on the effect with regard to third parties or the temporal effect of the illegality established by the Court. Because of the particular characteristics of each legal system that would undeniably raise a risk of inconsistency and even discrimination within the Community. The principle of legality cannot vary according to the treatment by each national legal system of the scope *ratione personae* or *ratione temporis* of the illegality of a rule of law, without seriously endangering the uniform enforcement of the individual rights of Community nationals.

Although the consistency of the preliminary ruling procedure and the uniformity of Community law require that the Court retain exclusive jurisdiction to determine the temporal effect of a decision declaring a regulation illegal, both those considerations give the national courts some Community responsibility.

In referring a question to the Court on this problem, taking into account the answer given in the *Roquette* judgment, the Tribunal d'Instance, Paris, acted as the 'ordinary' court of Community law: that is, while Article 177 of the Treaty:

'aims to avoid divergences in the interpretation of Community law which the national courts have to apply, it likewise tends to ensure this application by making available to the national judge a means of eliminating difficulties which may be occasioned by the requirement of giving Community law its full effect within the framework of the judicial systems of the Member States.'[16]

In referring to the Court a question disputed by academic commentators and by some national courts, the Tribunal d'Instance, Paris, highlights the beneficial and indispensable cooperation which makes it possible for those courts and the Court of Justice, by means of the preliminary ruling procedure, to work together to ensure that Community law is observed; it also makes it clear that the Court of Justice has exclusive jurisdiction to decide upon the illegality of a provision of Community law and to determine, where possible and necessary, the scope of that illegality with regard to third parties and its temporal effect.

10. The second principle governing the effect of a decision of the Court on the legality of a Community measure is that of the scope *ex tunc* of the illegality established. That is a general solution which applies as much to the interpretation of a provision of Community law as to a declaration that it is invalid or void.

In that regard the Court has held that the interpretation which it gives, in a preliminary ruling, to a rule of Community law

16 — Case 166/73, referred to above, at the second subparagraph of paragraph 2.

'clarifies and defines where necessary the meaning and scope of that rule as it must be or ought to have been understood and applied from the time of its coming into force'.

As a result,

'The rule as thus interpreted may, and must, be applied by the courts even to legal relationships arising and established before the judgment ruling on the request for interpretation . . .' [17]

As for the effect *ex tunc* of a declaration that a measure is void, it follows unambiguously from the first paragraph of Article 174, according to which

'if the action is well-founded, the Court of Justice shall declare the act concerned to be void'.

In the light of those remarks it is understandable that the Court has adopted the same solution with regard to the temporal effect of declarations of invalidity. In his opinion in the so-called 'Quellmehl' cases, Mr Advocate General Capotorti expressed a clear preference for such a solution, although it was the object of controversy among academic writers; in that particular instance he thought that the institutions should be left to define the practical consequences. [18]

The invalidation, by the judgments of the Court of 19 October 1977, of the regulatory provisions in issue in the *Quellmehl* cases was the foundation for actions in damages brought by the applicants against the Community. [19] Mr Advocate General Capotorti correctly drew attention to the decisive nature of the effect *ex tunc* of the invalidity established on 19 October 1977: the result of a simple effect *ex nunc* would have been to deprive the applicants of any ground for an action for compensation for damage suffered by them before the Court's decision that the measure was unlawful. [20]

In its judgments in those actions for damages, the Court ordered the Community to compensate the applicants for the damage suffered by them between the date on which the Community provision came into force and the date of the judgment of the Court establishing its invalidity. [21] That solution was clearly confirmed in the Court's judgment in the *Express Dairy Foods* case: before the Queen's Bench Division of the High Court of Justice, *Express Dairy Foods* had relied on the Court's decision of 3 May 1978 in the *Milac* case, [22] declaring invalid a provision of a Commission regulation, in support of its action to recover sums paid as monetary compensatory amounts to the national intervention agency. In reply to a question from the national court on the effect of that declaration of invalidity with regard to the period prior to the *Milac* judgment, the Court held that the Commission regulations adopted between 1 February 1973 and 11 August 1977 were invalid. [23]

17 — Case 61/69 *Amministrazione delle Finanze dello Stato* v *Denkavit Italiana* [1980] ECR 1205 at paragraph 16; see also Joined Cases 66, 127 and 128/79 *Salumi* [1980] ECR 1237 at paragraphs 7 to 9, Case 811/79, *Ariete* [1980] ECR 2545 at paragraphs 5 and 6, and the judgment of 13 December 1983 in Case 222/82, *Apple and Pear Development Council* v *Lewis* [1983] ECR 4083 at paragraph 38.

18 — Joined Cases 117/76 and 16/77, Joined Cases 124/76 and 20/77 and Joined Cases 64 and 113/76; Opinion of Mr Advocate General Capotorti in Joined Cases 117/76 and 16/77 *Ruckdeschel* [1977] ECR 1753 at pp. 1786 to 1787 and 1791 to 1792.

19 — Judgments of 4 October 1979 in Joined Cases 64 and 113/76, 167 and 239/78, 27, 28 and 45/79, Joined Cases 241, 242 and 245 to 250/78, Case 238/78 and Joined Cases 261 and 262/78 [1979] ECR 2955, *et seq*; see also the Opinion of Mr Advocate General Reischl in Case 66/80, referred to above, at p. 1229.

20 — Case 238/78 *Ireks-Arkady* v *Council and Commission* [1979] ECR 2955, Opinion of Mr Advocate General Capotorti at p. 2911.

21 — See in particular Case 238/78, *supra*, at p. 2975, point 1 of the operative part, and the judgment of 13 November 1984 in Joined Cases 256, 257, 265 and 267/80, 5 and 51/81 and 282/82 *Birra Wührer* [1984] ECR 3693 at point 2 of the operative part.

22 — Case 131/77, [1978] ECR 1041.

23 — Case 130/79, referred to above, at paragraph 8, and the Opinion in that case at p. 1905 *et seq.*

That case shows that effect *ex tunc*, combined with effect *ultra partes*, as described by the Court in the *International Chemical Corporation* judgment, [24] allows persons to whom a provision of Community law declared illegal by the Court has been applied to rely on that declaration of invalidity in bringing an action for repayment, in so far, it should be recalled, as the procedural requirements of internal law still make it possible.

National courts may thus have occasion in appropriate cases, if I may adopt the terms used by the Court in speaking of the effect *ex tunc* of a decision interpreting Community law, to apply the Court's decision to legal relationships arising and established before the judgment ruling on the request for a decision on validity.

Taken together, those considerations lead me to the conclusion that the Court, which has exclusive jurisdiction to declare a Community measure illegal from the date on which it came into force, must necessarily have the sole power to limit the effects of that illegality in exceptional cases; short of reconsidering the principle of the effect *ex tunc*, such a possibility must remain strictly circumscribed.

11. In envisaging that possibility one could be accused of giving greater weight to the principle of legal certainty than to the principle of legality.

In that respect no ambiguity should be allowed to remain in this already complex discussion: the principle of legality is part of the principle of legal certainty. What greater certainty can there be than that which results from the strict application of the law? But it may happen — and some will see it as an illustration of the adage *summum jus summa injuria* — that the full application of a rule of law, without temporal limitation, may seriously disrupt situations which had until then been considered definitive. In such cases the principle of legal certainty finds itself in opposition to the principle of legality, and that conflict must be resolved.

The different national systems have rules and practices for dealing with such a situation. Prescription, whether it takes the form of adverse possession or limitation of actions, is one example. Validating laws (laws passed to save the effects of unlawful or *ultra vires* acts) are another. Such a 'consolidation' of existing situations may result from a legislative measure or from the decision of a court. It is expressly provided for in Community law, in the context of the action for annulment, by the second paragraph of Article 174, according to which

'in the case of a regulation . . . the Court of Justice shall, if it considers this necessary, state which of the effects of the regulation which it has declared void shall be considered as definitive'.

As I have already pointed out, that exception corresponds to a necessity: that of reconciling the requirements of legality under Community law with those of legal certainty. The probability that such a contradiction will exist depends in particular on the length of the period during which the Community measure in question has been applied. In the context of actions for annulment the time-limit for the commencement of proceedings is sufficiently brief to reduce that possibility, as is confirmed in fact by the judgments of the Court. The risk is greater, however, in the context of the preliminary ruling procedure, since a decision on the validity of the measure, like a decision on its interpretation, may be made several years after the measure in question came into force.

24 — Case 66/80, referred to above, where the Court also had occasion to consider the effects of an invalidated regulation 'as it applied before it was declared to be void' (paragraph 22).

In those circumstances the Court has therefore been led to specify the conditions under which its decisions must have effect *ex nunc*. The starting point of its case-law in that regard is the *Defrenne II* judgment, in which the Court held that the direct effect of Article 119 could not be relied upon in support of claims concerning periods prior to the date of that judgment, 'except as regards those workers who [had] already brought legal proceedings or made an equivalent claim'. [25]

Pointing out that

'it would be impossible to go so far as to diminish the objectivity of the law and compromise its future application on the ground of the possible repercussions which might result, as regards the past, from such a judicial decision',

the Court found it appropriate to take account 'exceptionally' of the conduct of certain Member States and of the Commission which might have misled persons concerned, so that

'important considerations of legal certainty affecting all the interests involved, both public and private, [made] it impossible in principle to re-open the question as regards the past'. [26]

As the Court has had occasion to state in subsequent cases, that was an application 'of the general principle of legal certainty inherent in the Community legal order' in order to prevent 'the serious effects' which its judgments might have as regards the past 'on legal relationships established in good faith', by restricting 'for any person concerned the opportunity of relying upon the provision as thus interpreted with a view to calling in question those legal relationships'. [27]

The Court has also pointed out that 'the fundamental need for a general and uniform application of Community law implies that it is for the Court of Justice alone to decide upon temporal restrictions as regards the effects of the interpretation which it gives' and, taking into account the exceptional nature of such a decision, it has stated that 'such a restriction may, however, be allowed only in the actual judgment ruling on the interpretation sought'. [28]

12. In conjunction with decisions in which the Court has progressively assimilated decisions on the validity of measures and declarations that measures are void, [29] those judgments, in order to deal with the same contradiction, could arrive at no result other than the application of that exception in the context of preliminary rulings on validity, on the conditions laid down in particular in the *Denkavit* judgment: a risk that in the absence of any temporal limitation placed on the effects of the decision the retroactive application of the Court's judgment might cause serious disruption of legal relationships established in good faith.

It is clear that those conditions must be interpreted all the more strictly in so far as such a decision is exceptional in nature. In consequence a decision can be held to take effect *ex nunc* only where 'no other solution appears possible', and that restriction must of necessity be contained in the judgment

25 — Case 43/75, referred to above, at paragraph 75.

26 — Case 43/75, referred to above, paragraphs 71 to 74.

27 — Case 61/79, referred to above, paragraph 17.

28 — Case 811/79, referred to above, paragraphs 7 and 8; see also Case 128/79, referred to above, paragraphs 10 and 12 and Case 61/79, referred to above, paragraph 18.

29 — See in particular the Opinion of Mr Advocate General Reischl in Case 66/80, referred to above, at pp. 1227 to 1230.

ruling on the reference seeking the interpretation of a measure or a decision on its validity. [30]

In the three judgments of 15 October 1980 in the maize cases the Court held that it was only at the risk of serious disruption that the relationships established in good faith between the traders concerned and their national authorities, could be called in question by the retroactive application of the Court's decision invalidating the measures in issue. In the absence of any other solution, 'the general principle of legal certainty inherent in the Community legal order' [31] required that an exception be made with regard to the effects that that invalidity would normally have.

13. Such an exception must however be restricted to the measures intended to prevent such disruption. That, indeed, is the purport of the *Defrenne II* and related judgments, whose application in this case is suggested by the Commission.

Although there are certain similarities the situations are not, however, entirely comparable. In the *Defrenne* case, all the employers threatened by the retroactive application of the direct effect of the provisions of Article 119 of the Treaty were, in a way, on the same footing. It is easy to understand, therefore, that effect *ex nunc* was given to the decision of the Court in order to protect 'all the interests involved, both public and private', and thus prevent the socio-economic repercussions which its retroactive application could have had. [32]

In the maize cases, on the other hand, traders from countries with strong currency and traders from countries with weak currency were, by the application of the system of monetary compensatory amounts, placed in different positions. Only the former received payments from the Community by way of monetary compensatory amounts. Even if those payments were made in implementation of a regulation subsequently declared invalid, legal relationships thus established in good faith had to be protected. In view of the circumstances there was no way of fulfilling that requirement of legal certainty other than that which the Court took with regard to them.

But does the perpetuation — an exceptional measure, let us bear in mind — of legal relationships entered into to the advantage of traders who benefited from an illegal regulation also require the perpetuation of the effects of that illegality on other traders who, unlike their counterparts, have paid those same amounts?

I do not think so, because the scope of the exception must be limited to those measures which are strictly necessary for the prevention of serious disruption. The invalidity must take effect in the ordinary way, that is to say *ex tunc*, with regard to traders who have paid the compensatory amounts, without of course allowing them to benefit from unjust enrichment if they have incorporated the amounts paid by them in the prices of the products in question. [33]

14. I am therefore of the view that although the reversal of the Court's previous opinion requested by the Société des Produits de Maïs is not justified, the change of orientation proposed by the

30 — Ibid, p. 1236.
31 — Case 61/79, referred to above, paragraph 17.
32 — Case 43/75, referred to above, paragraph 74.
33 — Case 130/79, referred to above, paragraphs 13 and 14.

Commission is unsatisfactory. The modification which I suggest seems to me to confirm the approach taken in the *Roquette* case while at the same time firmly underlining the exceptional and restrictive nature of any derogation from the principle that such decisions have effect *ex tunc*.

15. That solution, if the Court adopted it, would reply to the second and third questions referred by the national court and deprive the fourth question of its purpose.

Finally, in reference to the question raised by that court as to the validity of Regulation No 652/76 with regard to certain listed products, it should be recalled that only the compensatory amounts applied to maize bran or broken maize (subheading 23.02 A I) are still in dispute. More specifically, it must be ascertained whether that product was placed at a disadvantage by the system of calculation held by this Court to be valid.

In that regard it was for the plaintiff to provide evidence that the product in question fell under a specific manufacturing process, and if so, that it had been subject to a supplementary charge under that system of calculation. Such evidence has not been forthcoming.

Having regard to these remarks, I therefore propose that the Court rule as follows:

(1) With regard to the fixing of monetary compensatory amounts applicable to products falling under subheading 23.02 A I, no factor of such a nature as to affect the validity of Regulation No 652/76 has been shown to exist;

(2) With regard to the fixing of monetary compensatory amounts applicable to products falling under subheadings 11.08 A I, 17.02 B I, 17.02 B II, 23.03 A I, 29.04 C III (b) and 35.05 A, Commission Regulation No 652/76 of 24 March 1976 is invalid for the reasons given in the judgment of 15 October 1980 in Case 145/79 (first indent of point 1 of the operative part);

(3) The invalidity of the provisions referred to does not make it possible to put in question the payment of monetary compensatory amounts by national authorities on the basis of those provisions prior to 15 October 1980.